

## AFTERNOON SESSION: 3:45–4:45 PM

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### Kelo v. City of New London: Backlash

3:45—4:45 p.m.

Thursday, March 9, 2006

Sturm Hall, Davis Auditorium

Few cases in recent memory have elicited such a storm of public opinion. Within 5 weeks of the decision, lawmakers in 28 states introduced 70 bills on eminent domain. Why the backlash? What are the implications for local and state elected officials engaged in planning and economic development? Hear from the National Council of State Legislatures and the public interest firm that represented Mrs. Kelo.

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INSTITUTE FOR JUSTICE

## **Floodgates Open**

### **Tax-Hungry Governments & Land-Hungry Developers Rejoice in Green Light from U.S. Supreme Court**

In the wake of the U.S. Supreme Court's decision in *Kelo v. City of New London* upholding the use of eminent domain for private development, the floodgates are opening to abuse. Already, the ruling has emboldened governments and developers seeking to take property from home and small business owners.

The following examples from newspapers across the country show that the threat of condemnation to homes, small business, churches and other property from government-forced private development projects is being realized. These incidents are the tip of the iceberg.

Thousands of properties nationwide are facing the threat of eminent domain for private development, and many more projects are in the planning stages. In its first-ever nationwide study *Public Power, Private Gain*, the Institute for Justice documented more than 10,000 instances of threatened or actual condemnation for private development nationwide from 1998 through 2002. The Institute for Justice will issue an updated report in early 2006.

#### **Monrovia, Calif.**

Less than two weeks after the *Kelo* decision City officials initiated eminent domain proceedings against landowner Bernard Buller. The City plans to build a housing development where Bueller's M&T Motors now stands.

#### **Moorpark, Calif.**

The Moorpark City Council has begun the process of returning the power of eminent domain to the Moorpark Redevelopment Agency. This is the first step in a downtown redevelopment plan that will ultimately use eminent domain to replace existing privately owned properties with office space, retail stores, restaurants and entertainment venues.

#### **National City, Calif.**

Officials in National City approved the use of eminent domain in a "large chunk" of the city to make room for redevelopment. The seized land will be turned over to a private developer to build an office tower, condos and retail space. Even properties within the redevelopment area that are not blighted will be taken through eminent domain because the proposed development will be more profitable than the current occupants.

### Oakland, Calif.

A week after the Supreme Court's ruling in *Kelo v. City of New London*, Oakland city officials used eminent domain to evict John Revelli from the downtown tire shop his family has owned since 1949. Revelli and a neighboring business owner had refused to sell their property to make way for a new housing development. Said Revelli of his fight with the City, "We thought we'd win, but the Supreme Court took away my last chance."

### San Diego, Calif.

Officials in San Diego are using the threat of eminent domain to force the relocation of a 150-employee laundry company called AlSCO to make way for condos and retail. AlSCO's owners had been able to resist negotiations with the developer for two years, but lost their bargaining power once the City and its power of eminent domain got involved. According to developer Patrick Rhamey, "The stick, the fire to create a sense of urgency for AlSCO to take action is the threat of eminent domain."

### San Pablo, Calif.

The San Pablo City Council is using eminent domain to seize two properties owned by Robert Johanson. One property contains a mobile home park and the other a Salvation Army store. The City's redevelopment will uproot Mr. Johanson's mobile home park business and its residents, as well as deprive those in the San Pablo community who depend on the Salvation Army store.

### Ridgefield, Conn.

The city of Ridgefield is proceeding with a plan to take 154 acres of vacant land through eminent domain. The property owner plans to build apartments on the land, while the city intends to use it for corporate office space. The case is currently before a federal judge, where the property owner has asked for an injunction to halt the eminent domain proceedings. Ridgefield officials directly cite the *Kelo* decision in support of their actions. First Selectman Rudy Marconi says that "it is now clear that if Ridgefield is victorious in federal court, which we feel we will be, then we can proceed with an eminent domain taking of the property."

### Washington, D.C.

Eminent domain is now being used to redevelop the 1940s-era Skyland Shopping Center in Southeast D.C. City officials recently asked the D.C. Superior Court to let them take private property from business owners who refuse to sell. Some property owners are fighting in court to keep their businesses, though a new shopping complex is already slated to replace Skyland. Supporters of the redevelopment project were buoyed by the recent *Kelo* decision.

### Boynton Beach, Fla.

Under the threat of eminent domain, the 50-year-old Alex Sims Barber Shop is selling to the City of Boynton Beach to make way for new residences and storefronts. Guarn

Sims called the Kelo ruling “the nail in the coffin” that ended his hope of saving the business.

Howard Goodman, "Redevelopment cuts out Boynton barbershop," *Sun-Sentinel (Fort Lauderdale)*, June 28, 2005, at 1B.

### Daytona Beach, Fla.

On August 19<sup>th</sup>, Florida Circuit Judge John W. Watson III gave the City of Daytona Beach permission to seize three Boardwalk properties to make way for a \$120 million retail complex. Justification for the condemnation came in part from a 1981 study declaring the area "blighted"—even though the area has seen many changes and new development since that 24-year-old blight designation. City attorney Scott Cichon pointed out that the Supreme Court's decision in *Kelo* had an effect on the case, affirming the city's plan to take private properties for other private parties. Private property under attack, *Chattanooga Times Free Press*, August 26, 2005

### Hollywood, Fort Lauderdale and Miramar, Fla.

Broward County officials on June 28 approved plans for new condo and retail development in these three cities. Hollywood residents in the targeted area fear their homes may now be taken for economic development following the Kelo decision. Mayor Mara Giulianti said the City would use eminent domain on a “case-by-case basis” to remove homeowners unwilling to sell.

### Hollywood, Fla.

For the second time in a month, Hollywood officials have used eminent domain to take private property and give it to a developer for private gain. Empowered by the recent Kelo ruling, City commissioners took a bank parking lot to make way for an exclusive condo tower. When asked what the public purpose of the taking was, City Attorney Dan Abbott didn't hesitate before answering, “Economic development, which is a legitimate public purpose according to the United States Supreme Court.” Shannon O'Boye, "Hollywood uses eminent domain, again; second condo development to benefit," *Sun-Sentinel (Fort Lauderdale)*, July 13, 2005, at 5B.

### Lake Zurich, Ill.

Liam Ford, Ruling on property rights makes owners vulnerable, *Chicago Tribune*, June 24, 2005. (link not available)

Five property owners facing condemnation for private development had asked Lake Zurich officials to hold off until the Kelo decision. The *Chicago Tribune* reports that City officials are now moving to condemn.

### Baltimore, Md. (East Side)

Baltimore's redevelopment agency, the Baltimore Development Corp., is exercising eminent domain to acquire more than 2,000 properties in East Baltimore for a biotech park and new residences. BDC Executive Vice President Andrew B. Frank told the *Daily Record* the Kelo decision “is very good news. It means many of the projects on which we've been working for the last several years can continue.”

### Baltimore, Md. (West Side)

Lorraine Mirabella, High court upholds eminent domain; Acquisitions fueled a rebirth; city reaction, Baltimore Sun, June 24, 2005.

The City of Baltimore is moving to acquire shops on the city's west side for private development. Ronald M. Kreitner, executive director of Westside Renaissance, Inc., a private organization coordinating the project with the city's development corporation, told the Baltimore Sun, "If there was any hesitation because of the Supreme Court case, any question is removed, and we should expect to see things proceeding in a timely fashion."

### Boston, Mass.

Two days after the Kelo decision, Boston City Council President Michael Flaherty called on the mayor of Boston to seize South Boston waterfront property from unwilling sellers for a private development project. "Eminent domain is one tool that the city can use," Flaherty told the Boston Globe.

### Arnold, Mo.

"Arnold Mayor Mark Powell applauded the decision," reports the St. Louis Post-Dispatch. The City of Arnold wants to raze 30 homes and 15 small businesses, including the Arnold VFW, for a Lowe's Home Improvement store and a strip mall—a \$55 million project for which developer THF Realty will receive \$21 million in tax-increment financing. Powell said that for "cash-strapped" cities like Arnold, enticing commercial development is just as important as other public improvements. Jake Wagman, High court rebuffs homeowners, St. Louis Post-Dispatch, June 23, 2005

### Richmond Heights, Mo.

City officials are taking bids to demolish 200 homes in the Hadley Township Neighborhood, just to turn the land over to a private developer who will build more homes. The City has said it is open to using public funds and eminent domain to accomplish the redevelopment.

### Saint Louis, Mo.

Just one month after the landmark Kelo decision, St. Louis Circuit Court Judge Timothy J. Wilson reluctantly issued a condemnation order requiring two St. Louis homeowners, located in an upscale neighborhood called Boulevard Heights, to give up their home to make way for a shopping center. Basing his decision on Missouri law and the Kelo decision, the judge lamented: "The United States Supreme Court has denied the Alamo reinforcements... Perhaps the people will clip the wings of eminent domain in Missouri, but today in Missouri it soars and devours."

### Sunset Hills, Mo.

On July 12, two-and-a-half weeks after the Kelo ruling, Sunset Hills officials voted to

allow the condemnation of 85 homes and small businesses. This was the first step in allowing the private Novus Development Corp. to use eminent domain against the property owners who stand in the way of a planned \$165 million shopping center and office complex. On August 18<sup>th</sup> Novus' \$28 million bank loan fell through, placing the development project in limbo.

#### Lodi, N.J.

Save Our Homes, a coalition of 200 residents in a Lodi trailer park targeted by the City for private retail development and a senior-living community, goes to court on July 18 to try to prevent a private developer from taking their homes. Lodi Mayor Gary Paparozzi called the Kelo ruling a "shot in the arm" for the town. He told the Bergen County Record, "The trailer park is like a poster child for redevelopment. That's the best-case scenario for using eminent domain."

#### Long Branch, NJ

City officials in Long Branch voted unanimously in July to use eminent domain to take modest oceanfront homes to make way for new luxury condos. Activists have rallied in protest and several grassroots homeowners organizations have been established to lead a coordinated resistance. Two bills are currently pending in the State legislature that would restrict eminent domain abuse and U.S. Congressman Frank Pallone, who represents Long Branch, told residents he will draft similar federal legislation in September.

#### Spring Valley, N.Y.

Less than a week after the Kelo decision, Spring Valley officials asked the New York Supreme Court to authorize the condemnation of fifteen downtown properties in an area where a private developer plans to construct residential and retail buildings. On August 12th the Court granted the village permission to condemn more than thirty properties, over twice as many as the village sought to acquire.

#### Ventnor City, N.J.

Mayor Tim Kreisler wants to demolish 126 buildings - mom-and-pop shops, \$200,000 homes, and apartments - to erect luxury condos, high-end specialty stores, and a parking garage. Kreisler has already won one lawsuit and is in the middle of another, and the Supreme Court's Kelo ruling only bolsters his confidence. "People don't like to hear it," Kreisler said, "but bringing people with more money into the area will hopefully bring more money to store owners and reduce everyone's taxes."

#### Cleveland, Ohio

Developer Scott Wolstein has planned a \$225 million residential and retail development in the Flats district. Wolstein has most of the property he needs, but is pleased that Kelo cleared the way for the City to acquire land from any unwilling sellers. If eminent domain is "necessary," he told the Plain Dealer, "we think this makes it clear that there won't be any legal impediments." Previously, city leaders publicly supported Wolstein's call for eminent domain.

### Toledo, Ohio

Herman Blankenship, whose auto-body shop was one of 99 properties taken to make way for the expansion of a Jeep plant, had his recent appeal to the Supreme Court denied when the Court decided not to hear his case. Blankenship's shop was seized and destroyed in 2004, but he had held out hope that the Kelo ruling would bring him justice.

### Warwick, R.I.

In 2000, the developer hired by the City to redevelop the Station District was unable to acquire the land he needed through negotiations with property owners. Now, after the Supreme Court's Kelo ruling, Warwick Station Redevelopment Agency chairman Michael Grande says, "The only obstacle to private development of hotels, condos, office space, and retail is the price of the dirt." According to Grande, the Court's ruling "just shores it all up."

### Memphis, Tenn.

The Riverfront Development Corp. is planning a massive, 5-mile development effort, including the use of eminent domain to claim a four-block section from the current owners for a mixed-use development. "[Kelo] definitely gives the city more tools in its tool box for dealing with the legal issues surrounding that piece of property," RDC president Benny Lendermon told the Commercial Appeal.

### Freeport, Texas

Hours after the Kelo decision, officials in Freeport began legal filings to seize some waterfront businesses (two seafood companies) to make way for others (an \$8 million private boat marina), according to the Houston Chronicle.

### Menomonee Falls, Wisc.

Property owners in downtown Menomonee Falls have been notified that their land could be seized for a redevelopment project. Even though a concrete plan for the redevelopment doesn't exist yet, 80 parcels of land are at risk of eminent domain. The Milwaukee Journal Sentinel notes that the City's ability to condemn property for economic gain was made easier by the Supreme Court's Kelo ruling.

### West Allis, Wisc.

West Allis officials want to "revitalize" the West Allis Towne Center, a shopping mall. If the Supreme Court had ruled in favor of the homeowners in Kelo, officials may not have been able to use eminent domain to claim the mall, West Allis development director John Stibal told the Milwaukee Journal Sentinel.



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## **MODEL LEGISLATION**

### **I. State Constitutional Amendment**

A number of states have better-defined takings provisions than the language of the Fifth Amendment. The best examples are Alabama, Arizona, Colorado, Oklahoma, Mississippi, Missouri, South Carolina, Washington, and Wyoming. Looking at these constitutions, there are two primary types of provisions that give more protection to owners from condemnations for private development. First, there is an explicit prohibition on taking private property for private use. Second, a number of states also provide that public use is a judicial question, without deference to a legislative determination that a use be public. Both of those would give substance to the term “public use” in the Fifth Amendment.

Below is language that combines portions of other constitutions, language from Thomas Cooley’s Constitutional Limitations, and other language relating to economic development.

With just compensation paid, private property may be taken only when necessary for the possession, occupation, and enjoyment of land by the public at large, or by public agencies. Except for privately owned public utilities or common carriers\*, private property shall not be taken for private commercial enterprise, for economic development, or for any other private use, except with consent of the owner. Property shall not be taken from one owner and transferred to another, on the grounds that the public will benefit from a more profitable private use. Whenever an attempt is made to take property for a use alleged to be public, the question whether the contemplated is truly public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

\*In some states, it may be necessary to specifically include “electric cooperatives,” or some other type of entity, depending on the nature of utilities and common carriers in your state.

### **II. State Statute Limiting Eminent Domain Abuse**

One simple way to remove the threat of eminent domain for economic development is simply to delete the statutory authorization for such uses of eminent domain. For example, in 2004, Utah simply removed the authorization for eminent domain from its act giving powers to redevelopment authorities. Authorizations for eminent domain for private business generally appear in statutes dealing with economic or industrial development, redevelopment, and municipal powers.

If an outright ban is not desired, a few possible approaches to a statute that would prevent the use of eminent domain for private development appear below. Variations on these themes were

passed in Alabama and Texas in 2005 (though both states left large blight loopholes). These are a very effective way to curb abuse.

- **Requiring Eminent Domain for Public Use and Defining Public Use**

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning entity shall use eminent domain unless it is necessary for a public use. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the use of eminent domain complies with this section and is reasonably necessary.

Public use: The term “public use” shall only mean (1) the possession, occupation, and enjoyment of the land by the general public, or by public agencies; (2) the use of land for the creation or functioning of public utilities or common carriers\*; or (3) where the use of eminent domain (a)(i) removes a public nuisance; (ii) removes a structure that is beyond repair or unfit for human habitation or use; or (iii) is used to acquire abandoned property and (b) eliminates a direct threat to public health or safety caused by the property in its current condition\*\*. The public benefits of economic development, including an increase in tax base, tax revenues, employment, general economic health, shall not constitute a public use.

- **Prohibiting Eminent Domain for Private Business**

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof nor any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, economic development, or any other private use, except that property may be (1) transferred or leased to private entities that are common carriers or public utilities\*; (2) where the use of eminent domain (a)(i) removes a public nuisance; (ii) removes a structure that is beyond repair or unfit for human habitation or use; or (iii) is used to acquire abandoned property and (b) eliminates a direct threat to public health or safety caused by the property in its current condition\*\*; (3) to private entities that occupy an incidental area within a publicly owned and occupied project. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the use of eminent domain complies with this section and is reasonably necessary.

- **Prohibiting Eminent Domain for Economic Development and Defining Economic Development**

Notwithstanding any other provision of law, neither this State nor any political subdivisions thereof nor any other condemnor shall use eminent domain to take private property without the consent of the owner to be used for economic development. Whenever property is condemned and will be used by a private party, the condemnor must establish by clear and convincing evidence that the use of eminent domain complies with this section and is reasonably necessary.

*Economic Development*--The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public possession, occupation, and enjoyment; (2) the transfer of land to a private entity that is a public utility or common carrier\*; (3) the use of eminent domain (a)(i) to remove a public nuisance; (ii) to remove a structure that is beyond repair or unfit for human habitation or use; or (iii) to acquire abandoned property and (b) to eliminate a direct threat to public health or safety caused by the property in its current condition\*\*; or (4) to private entities that occupy an incidental area within a publicly owned and occupied project.

\*In some states, it may be necessary to specifically include some other type of utility, like "electric cooperatives," depending on the nature of utilities and common carriers in your state.

\*\*For a more detailed definition of conditions that constitute a direct threat to public health or safety in their current condition, see the "Model Blight Statute" on the Castle Coalition's model legislation page.

In addition to the three examples provided above, three other types of provisions that also discourage the abuse of eminent domain are (1) allowing a former owner to regain ownership of condemned property if the government fails to use it within a given period of time; (2) time limits on blight or redevelopment designations; (3) attorneys fees for condemnees challenging the validity of takings.

### **III. State Statute Defining Blight**

Blight statutes are written with such vague language that the criteria for designating areas as blighted, conservation areas, in need of redevelopment or other similar designations can literally apply to any property. To the extent the removal of blight is still desired, it is best to use objective and quantifiable factors. The following seeks to ensure that only truly harmful properties are subject to the power of eminent domain, not just those neighborhoods with chipped paint, cracked sidewalks or those that provide insufficient tax revenue in the eye of local government.

Notwithstanding any other provision of law, neither this State nor any political subdivision thereof or any other condemning entity shall use eminent domain to take private property without the consent of the owner to be used for private commercial enterprise, economic development, or any other private use except that property may be transferred or leased

(1) to private entities that are public utilities or common carriers\*;

(2) to private entities that occupy an incidental area within a publicly owned and occupied project;

(3) to private entities if the current condition of the property poses an existing threat to public health and safety and meets the definition of “condemnation-eligible” property. The condemnor shall bear the burden of establishing by clear and convincing evidence that property is condemnation-eligible.

Condemnation-eligible property shall include:

- (1) Any premises which because of physical condition, use or occupancy constitutes a public nuisance or attractive nuisance.
- (2) Any structure which, because it is dilapidated, unsanitary, unsafe, or vermin-infested, has been designated by the agency responsible for enforcement of the housing, building or fire codes as unfit for human habitation or use.
- (3) Any structure which, in its current condition, is a fire hazard, or is otherwise dangerous to the safety of persons or property.
- (4) Any structure from which the utilities, plumbing, heating, sewerage or other facilities have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use.
- (5) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin.
- (6) Any property that has tax delinquencies exceeding the value of the property.
- (7) Any property with code violations affecting health or safety that has not been substantially rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency.
- (8) Any property which, by reason of environmentally hazardous conditions, solid waste pollution or contamination, poses a direct threat to public health or safety in its present condition.
- (9) Any abandoned property, defined as property not occupied by a person with a legal or equitable right to occupy it and for which the condemning authority is unable to identify and contact the owner despite making reasonable efforts or which has been declared abandoned by the owner, including an estate in possession of the property.

\*In some states, it may be necessary to specifically include “electric cooperatives,” or some other type of entity, depending on the nature of utilities and common carriers in your state.

#### **IV. State Moratorium**

Several states are using or considering moratoria on the use of eminent domain for private development in order to give the legislature time to study and reform state laws regarding eminent domain for private business development. Many Connecticut municipalities, including New London, have agreed to a moratorium at the request of the Governor. Moratoria also are proposed in New York and New Mexico, among other states, and one has passed in Ohio. Below is a general moratorium provision.

Notwithstanding any provision of law, until further enactment by this legislature [or until a specific date], no political subdivisions of this State nor any other party authorized to use eminent domain shall initiate or pursue condemnation or eviction actions under [insert statutory chapters covering economic development or redevelopment. Be sure to include all relevant sections, as there are often several.] when the taking will result in the properties being owned or controlled by a private party. This prohibition does not apply to the use of eminent domain for the taking of private property to be used by a common carrier or public utility. This moratorium includes, but is not limited to, all proceedings currently in progress on the date of enactment of this act.

## V. Charter Provision or Ordinance for Local Governing Body

The following three provisions may be adopted as charter amendments to a municipal charter. The first and second provisions do essentially the same thing, while the third provision can be adopted separately or with either provision one or two. A number of cities are considering adopting provisions similar to the first and second types of provision. The language in the first model provision is modeled after the language of the statute that permitted the condemnations in the *Kelo* case. The third type of provision, prohibiting transfer to private parties, has been adopted by Mesa, Arizona.

- **Prohibiting Eminent Domain for Private Business**

Notwithstanding any other provision of law, neither this City nor any of its subdivisions shall use eminent domain to take private property without the consent of the owner to be used for private commercial, financial, retail, or industrial enterprise, except that property may be transferred or leased (1) to private entities that are public utilities or common carriers and (2) to private entities that occupy an incidental area within a public project, such as a retail establishment on the ground floor of a public building.

- **Prohibiting Eminent Domain for Economic Development**

Notwithstanding any other provision of law, neither this City nor any of its subdivisions shall use eminent domain to take private property without the consent of the owner to be used for economic development.

*Economic Development*—The term "economic development" means any activity to increase tax revenue, tax base, employment, or general economic health, when that activity does not result in (1) the transfer of land to public ownership, such as for a road,

hospital or military base; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a harmful use of the land, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property.

- **Prohibiting Transfer of Condemned Property to Private Parties**

Notwithstanding any other provision of law, private property acquired through eminent domain without the consent of the owner shall not be dedicated, sold, leased in substantial part, or otherwise transferred to a private person, partnership, corporation, or any other entity for a period of ten (10) years following the acquisition of the property by the City, except that property may be transferred or leased (1) to private entities that are public utilities or common carriers and (2) to private entities that occupy an incidental area in a public project, such as a retail establishment on the ground floor of a public building.



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## The Polls Are In

### **Americans Overwhelmingly Oppose Use of Eminent Domain for Private Gain**

Tax-hungry bureaucrats and land-hungry developers generally support eminent domain for private commercial development. That's no surprise. After all, when cities can take any apartment building and replace it with luxury condominiums, or condemn any corner store and replace it with a Wal-Mart, using eminent domain is much easier than buying property from willing owners.

Ask pretty much anyone else, though, and there's clear consensus. Americans across the nation from all walks of life say the use of eminent domain for private gain is wrong, un-American, and completely unjust. Advocacy groups ranging from the NAACP to the Libertarian Party, from AARP to the American Farm Bureau Federation, stand in opposition. Key Democrats and Republicans in the U.S. Congress have already signed onto legislation prohibiting the use of federal monies in these projects. Landowners, tenants and concerned citizens have engaged in grassroots activism, speaking out at town meetings, testifying at legislative hearings and marching through major cities, all in an effort to protect the rights of home and small business owners to keep what's theirs. There's no doubt that Americans reject the U.S. Supreme Court's stamp of approval in *Kelo v. City of New London*—and the polls are unambiguous.

Monmouth University, in the most recent scientific poll on the issue, surveyed residents of New Jersey. Citizens of the Garden State, where the use of eminent domain for private commercial development has skyrocketed since the *Kelo* decision came down, unequivocally believe it's wrong. 90% of New Jerseyans oppose taking low-value homes to build a shopping center, and 86% say it's wrong to use eminent domain to replace lower-value residences with higher-value homes.

New Jersey is not the exception. A poll conducted by *NBC* and the *Wall Street Journal* (July 2005) reveals that when it comes to the Supreme Court, Americans care most about private property rights than any other issue—including displaying the Ten Commandments on government property, state right-to-die laws, medical marijuana, and even parental notification for abortions. New Hampshire, a state divided on many issues, stands united on this one. According to a University of New Hampshire poll, 93% of those surveyed say they oppose the taking of private property for economic development reasons.

A number of Internet surveys conducted by major news organizations following the *Kelo* decision's announcement support the same conclusion. Even when phrased a number of different ways—“Should local governments be able to seize homes and businesses” (*CNN*), “Should cities be allowed to seize homes and buildings for private projects as long as they benefit the public good” (*MSNBC*), “Should the government be allowed to seize private property and turn it over to developers” (*Christian Science Monitor*)—the

answer is always the same. Americans say no, no and no. The Castle Coalition and the Institute for Justice wholeheartedly agree. For more information on poll results, please visit [http://www.castlecoalition.org/resources/kelo\\_polls.html](http://www.castlecoalition.org/resources/kelo_polls.html)

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### **St. Louis Business Journal | January 2006**

86% of Missouri voters overwhelmingly favor more restrictions on eminent domain. (Source: "Survey question: Should the use of eminent domain be more restricted?" *St. Louis Business Journal*, Jan. 9, 2005.)

### **Mason-Dixon Polling & Research, Inc. | October 2005**

In a poll of 625 registered Florida voters, 89 percent said they supported having the state legislature adopt "increased protections for property owners." The opposition to the Kelo decision was nearly uniform across party lines, with 74 percent of Democrats, 75 percent of Republicans and 72 percent of independent voters disagreeing with the ruling. (Source: "Florida voters favor eminent domain restrictions," *Jacksonville Business Journal*, November 8, 2005.)

### **Monmouth University/Gannett NJ Poll | October 5, 2005**

90% of New Jerseyans say it's not ok to take low value homes to build a shopping center, and 86% believe it's wrong to take low value homes for higher value homes. 76% feel private developers benefit more than the local community when eminent domain is used.

### **American Survey | July 14-17, 2005**

An American Survey of 800 registered voters nationwide shows 68% favoring legislative limits on the government's ability to take private property away from owners, with 62% of Democrats, 74% of independents and 70% of Republicans supporting such limits. (Source: Gary J. Andres, "The Kelo backlash," *The Washington Times*, August 29, 2005.)

### **Retail Traffic | August 2005**

Poll of readers shows an overwhelming majority oppose the Supreme Court ruling that states can employ eminent domain for private developments. (Source: David Bodamer, "Eminently unfair," *Retail Traffic*, August 2005, at 10.) results

### **Decatur Daily | August 8, 2005**

Readers: Eminent domain law isn't strong enough?  
A new Alabama law does not adequately protect property owners from government seizures, according to most of the 230 readers who answered a poll at [decaturdaily.com](http://decaturdaily.com).

## **Quinnipiac University | July 28, 2005**

Connecticut Voters Say 11 - 1 Stop Eminent Domain, Quinnipiac University Poll Finds.

### **Wall Street Journal/NBC News poll**

"In the wake of court's eminent domain decision, Americans overall cite 'private-property rights' as the current legal issue they care most about, topping parental notification for minors, abortions or state right-to-die laws."

(John Harwood, "Poll Shows Division on Court Pick," *Wall Street Journal*, July 15, 2005)

### **University of New Hampshire Poll**

"And while New Hampshire may be divided over many issues concerning the Supreme Court, they are nearly unanimous in their opposition to the effect of the *Kelo* decision – 93 percent say they oppose the taking of private property for economic development reasons, only 4 percent favor this use of eminent domain, and 3 percent are unsure."

### **MSNBC poll**

Should cities be allowed to seize homes and buildings for private projects as long as they benefit the public good? 98% said, "No, property owners will lose and developers gain." 2% said, "Yes, all parties benefit in the long run."

### **CNN poll**

Should local governments should be able to seize homes and businesses?  
33% said it should be used for public use, 1% said it should be used for private economic development, and 66% said it should never be used.

### **HamptonRoads.com**

Should local governments be able to seize homes for private economic development that will produce jobs and tax revenue?  
4.61% said yes, 93.59% said no, and 1.8% were unsure

### **Bradenton.com**

Should local governments be allowed to use eminent domain for private economic development?  
3% said Yes - if the action contributes to the community's general welfare.  
7% said Yes - but only under proven and extraordinary circumstances.  
40% said No - the state of Florida's rule forbidding such use should be enforced.  
50% said No - eminent domain is an affront to property rights in all cases.